

*The Law of
Trade Marks and Designs*

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Publishers :

G. C. ROY & CO.

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Post Box : 10405, Calcutta

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No. 1924

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TAMILNADU INDIA

The Law of Trade Marks & Designs

CONTAINING THE ENTIRE TRADE MARKS ACT,
COMMENTARIES ON TRADE MARKS,
TRADE NAMES & DESIGNS.

1940

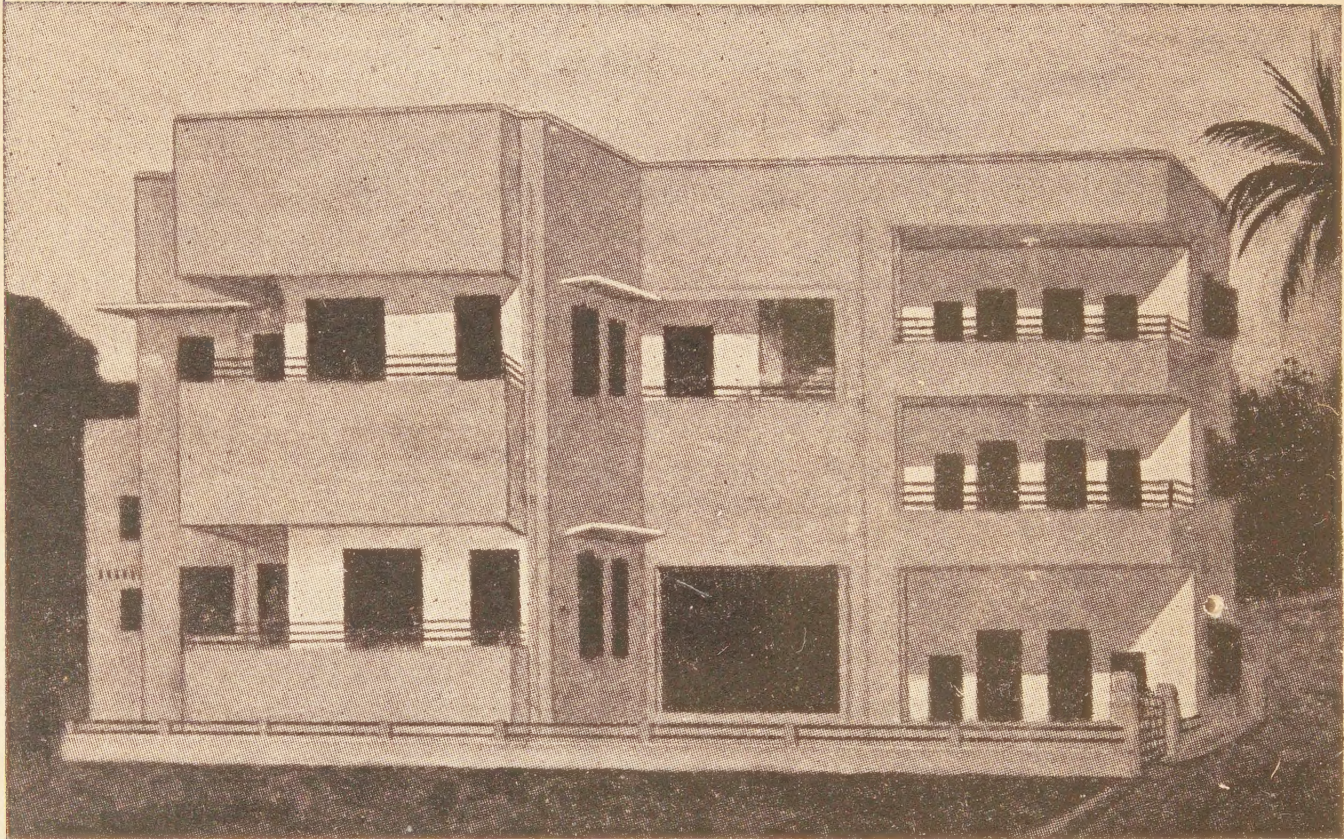
BY

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Rs. 2/-

Published by :
G. C. ROY & CO.



PREMIER HOUSE OF PATENT & TRADE MARKS ATTORNEYS.
P468, Southern Avenue, Kalighat, Calcutta.
Post Box 10405, Calcutta.
Phone South 1893.

Printed by
S. C. SEN,
USHA PRESS,
74, Dharamtalla Street,
Calcutta.

PREFACE.

The publication of the book, the first of its kind, is a modest attempt on the part of the author to explain in a most elementary and general manner, the fundamentals of trade marks law and practice in India. Readers desiring further details on a specific point are referred to the relevant sections of the Act itself, indicated in the margin. The trade marks Act is new in India. It is a recent enactment having received the assent of the Governor General on the 11th March 1940. The rules under the Act are still under the consideration of the Government.

In writing the book, the object of the author has been not so much to help lawyers—though the utility of the book to lawyers cannot altogether be brushed aside—as much to help businessmen, and those interested in the registration of trade marks. Reference, therefore, to case laws has been scrupulously avoided to make it easily intelligible to lay men.

The book is divided into 3 parts : the first part contains the commentaries on and the bare text of the trade marks Act ; the second part contains a brief and general reference to trade names, right to which, in the absence of a statutory enactment, accrues by common law and the third part deals with the registration of designs.

Extracts from the “Patent office hand book”,
“Report on the Registration of Trade marks in

India” by R. K. Nehru, I.C.S., sometimes referred to here as ‘Nehru Report’ have been inserted for elucidation of certain points and to show departmental rules and practice.

Lastly, I have to acknowledge the valued help I have derived from the standard work as Halsbury’s Laws of England and others.

Any suggestions from the kind readers for further improvement of the book will be thankfully received. As the book is being hurried through the press, printing and other mistakes, inspite of the best endeavour of the author, may crop up, which the kind readers are requested to overlook. The author shall consider his labour amply rewarded if the book proves useful to those for whom it is intended.

— *Author.*

P. 468, Southern Avenue,
Calcutta.

TABLE OF CONTENTS

Part I.

TRADE MARKS.

	Page
The Trade Marks Act : <i>Commentaries</i> ..	V—VII
The Trade Marks Act : <i>bare text</i> ..	VII—XI

Part II.

TRADE NAMES..

Chapter I. TRADE NAMES IN GENERAL

(a) Right to Trade name is a Common Law right ..	97
(b) The nature of Common Law right ..	„
(c) Infringement of Trade Marks ..	„
(d) Kinds of Trade names ..	98

Chapter II. TRADE NAMES OF BUSINESS

Limitation on use of Trade names of business	99
--	----

Chapter III. TRADE NAMES OF GOODS

Limitation on use of Trade names of goods	100
---	-----

Chapter IV. MISCELLANEOUS

(a) Registration of Trade names ..	101
(b) Trade marks and Trade names contrasted	102
(c) Relief for infringement of Trade names ..	103

Part III.

DESIGNS

Chapter I. REGISTRABILITY OF DESIGNS

(a) What is a design ..	107
(b) Distinction between a Design and a Trade mark ..	108
(c) Conditions of registration of Design ..	„
(d) What cannot be registered as a design	110
(e) Register of Designs ..	111

Chapter II. PROCEDURE FOR REGISTRATION OF DESIGNS

	Page
(a) Office and officer for the registration of Design.	.. 112
(b) Who may apply for registration of Design	.. „
(c) Manner of applying for registration of Design.	.. 113
(d) Documents required for registration of Design.	.. „
(e) From application to Registration	.. 115
(f) Time limit for proceeding with an application of a Design	.. „

Chapter III. REGISTRATION AND AFTER

(a) Effect of registration of Design	.. 116
(b) Marking of articles	.. „
(c) Duration and renewal of copy right	.. „
(d) Cancellation	.. 117
(e) Rectifications and corrections	.. „

Chapter IV. INFRINGEMENT

(a) What constitutes infringements	.. 118
(b) What does not constitute infringement	.. „
(c) Penalty for infringement	.. 119

Chapter V. MISCELLANEOUS

(a) Classification of goods	.. 119
(b) Fees	.. 121

CONTENTS

Part I.

TRADE MARKS ACT—*Commentaries*.

Chapter I. TRADE MARKS IN GENERAL	Page.
(a) History of Trade Mark Act In India	2
(b) Extent of the Act	2
(c) Commencement of the Act	2
(d) The aims and objects of the Trade Marks Act	3
(e) Systems of Trade marks registration in use in different countries	4—6
(f) System of Trade mark registration and India	6—7
Chapter II. DEPOSIT OF TRADE MARKS	
(a) Deposit: The immediate duty ..	7
(b) Deposit and registration of Trade mark	8
(c) Procedure for deposit of Trade mark	9—11
(1) Office and officer for the deposit of Trade marks	9
(2) Who may apply for deposit of Trade marks	10
(3) Time limit for deposit of Trade marks ..	„
(4) Fees and manner of applying for deposit of Trade marks	„
(5) Documents required for deposit of Trade marks	11
Chapter III. REGISTRABILITY OF TRADE MARKS	
(a) Kinds of Trade marks	12—15
(b) What can be registered as a Trade mark: Conditions of registration ..	15—17
(c) What cannot be registered as a Trade mark	17—18
(d) Restraint on use of Royal arms and state Emblems	18
(e) Registrability of old marks under the New Act	18

	Page
(f) Registration of Trade mark, subject to disclaimer	19
(g) Concurrent registration of the same or similar Trade marks	,,
(h) Trade mark register	20
 Chapter IV. PROCEDURE FOR REGISTRATION OF TRADE MARKS	
(a) The office and officer for the registration of Trade marks	21
(b) Who may apply for registration of Trade marks	,,
(c) Documents required to be filed with each application for registration	,,
(d) Examination	22
(e) Advertisement	,,
(f) Opposition	,,
(g) Certificate of registration	23
(h) Time limit for proceeding with an application for Trade mark	,,
(i) Limitation of time for action	,,
(j) Appeal	24
 Chapter V. REGISTRATION AND AFTER	
(a) Effect of registration	24
(b) The unregistered Trade mark and its status	25—27
(1) Third party right	26
(2) Cancellation	,,
(3) Obtaining concurrent registration of identical Trade mark	,,
(4) Unregistered Trade mark and action for infringement	27
(c) Duration and renewal of registration	28
(d) Rectifications and corrections	,,
 Chapter VI. USE OF TRADE MARK & REGISTERED USER	
(a) Use of Trade mark	29
(b) Registered user of a Trade mark	,,
 Chapter VII. INFRINGEMENT	
(a) What is infringement	30
(b) What constitutes infringement	,,

	Page
(c) What does not constitute infringement	31
(d) Test of infringement	32
Chapter VIII. ASSIGNMENT	32-33
Chapter IX. SPECIAL PROVISIONS FOR TEXTILE GOODS	34-35
Chapter X. OFFENCES AND PENALTY	35
Chapter XI. MISCELLANEOUS	
(a) Fees	36
(b) Agents	„
(c) Suits for infringement	„
(d) Registration of wrappers and containers under the Trade marks Act ..	37

THE TRADE MARKS ACT : *bare text*

CHAPTER 1.

PRELIMINARY.

Sections

1. Short title, extent and commencement.
2. Definitions
3. Application of other laws not barred.

CHAPTER II.

THE REGISTER AND CONDITIONS FOR REGISTRATION.

4. The register of trade marks.
5. Registration to be in respect of particular goods.
6. Distinctiveness requisite for registration.
7. Limitation as to colour.
8. Prohibition of registration of certain matter.
9. Use of names of chemical elements barred.
10. Prohibition of registration of identical or similar trade marks.
11. Registration of parts of trade marks and of trade marks as a series.
12. Associated trade marks.
13. Registration subject to disclaimer.

CHAPTER III.

PROCEDURE FOR, AND DURATION OF REGISTRATION

Sections

14. Application for registration.
15. Opposition to registration.
16. Registration.
17. Jointly owned trade marks.
18. Duration and renewal of registration.
19. Effect of removal from register for failure to pay fee for renewal.

CHAPTER IV.

EFFECT OF REGISTRATION.

20. No action for infringement of unregistered trade marks.
21. Right conferred by registration.
22. No infringement in certain circumstances.
23. Registration to be *prima facie* evidence of validity.
24. Registration to be conclusive as to validity after seven years.
25. Saving for vested rights.
26. Saving for use of name, address, or description of goods.
27. Words used as name or description of an article or substance.

CHAPTER V.

ASSIGNMENT AND TRANSMISSION.

28. Power of registered proprietor to assign and give receipts
29. Assignability of registered trade marks.
30. Assignability of unregistered Trade mark.
31. Restrictions on assignment or transmission where multiple exclusive rights would be created.
32. Restrictions on assignment or transmission when exclusive rights would be created in different parts of British India.
33. Conditions for assignment otherwise than in connection with the goodwill of a business.
34. Conditions for assignment and transmission of certification trade marks and associated trade marks.
35. Registration of assignments and transmissions.

CHAPTER VI.

USE OF TRADE MARKS AND REGISTERED USERS.

Sections

36. Proposed use of trade mark by company to be formed.
37. Removal from register and imposition of limitations on ground of non-use.
38. Defensive registration of well-known trade marks.
39. Registered users.
40. Power of registered user to take proceedings against infringement.
41. Application for registration as registered user.
42. Power to Registrar to vary or cancel registration as registered user.
43. Registered user not to have right of assignment or transmission.
44. Use of one of associated or substantially identical trade marks equivalent to use of another.
45. Use of trade mark for export trade, and use when form of trade connection changes.

CHAPTER VII.

RECTIFICATION AND CORRECTION OF THE REGISTER.

46. Power to cancel or vary registration and to rectify the register.
47. Correction of register.
48. Alteration of registered trade mark.
49. Adaptation of entries in register to amended or substituted classification of goods.

CHAPTER VIII.

CERTIFICATION TRADE MARKS.

50. Provisions of this Act applicable to certification trade marks.
51. Certification trade mark not to be registered in name of person trading in goods certified thereby.
52. Determination whether a mark is a certification trade mark.

Sections.

53. Application for registration.
54. Consideration of application or registration by Central Government.
55. Opposition to registration.
56. Deposit of regulations governing the use of a certification trade mark.
57. Right conferred by registration.
58. No infringement in certain circumstances.
59. Cancellation or varying of registration.
60. Costs not to be awarded in certain cases.
61. Decisions of Central Government to be final.

CHAPTER IX.

SPECIAL PROVISIONS FOR TEXTILE GOODS.

62. Textile goods.
63. Branch of Trade Marks Registry at Bombay and Textile Marks Record.
64. Restrictions on registration of piece goods.
65. Registration.
66. Advisory Committees.

CHAPTER. X.

OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

67. Penalty for falsification of entries in register.
68. Penalty for falsely representing a trade mark as registered.
69. Restraint of use of Royal Arms and State emblems.

CHAPTER XI.

MICELLA NEOUS.

70. Procedure before the Registrar.
71. Procedure before Central Government.
72. Procedure in certain cases of option to apply to a High Court or the Registrar.
73. Suits for infringement to be instituted before District Court
74. Appearance of Registrar in proceedings involving rectification of register.

Sections

- 75. Evidence of entries in register and things done by Registrar.
 - 76. Appeals.
 - 77. Power to High Courts to make rules.
 - 78. Certificate of validity.
 - 79. Trade usage, etc, to be taken into consideration.
 - 80. Agents.
 - 81. Fees.
 - 82. Crown to be bound.
 - 83. Power to make reciprocal arrangements with other Governments.
 - 84. Power of Central Government to make rules.
 - 85. Power to Central Government to make provision for application for registration before the coming into force of the remaining provisions of Act.
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PART I

Containing

- 1. TRADE MARKS ACT —Commentaries.**
- 2. TRADE MARKS ACT — Bare Text.**

CHAPTER I

TRADEMARK IN GENERAL.

HISTORY OF TRADEMARK ACT IN INDIA.

The question of undertaking legislation for the registration of Trade marks in India has been engaging the attention of the India Government for over 60 years. Until 1928, Commercial opinion was found overwhelmingly against the proposal. The public opinion seemed to have been satisfied so long with the remedies available under the Common Law. As a result of the economic development in India since the war, the demand for registration seemed to have strengthened and of late the demand became more insistent. In 1937 opinions were invited from the Provincial Governments and Commercial bodies on the proposal to introduce a system of statutory Trade mark registration which led ultimately to the enactment of the Trade marks Act, 1940.

EXTENT OF THE ACT.

The Act extends to the whole of British India. (Burma, Aden and the Native States of India are not parts of British India).

COMMENCEMENT OF THE ACT.

Sections 1 and 85 of this Act have already come to force, but sections 2 to 84, which contain the substantive provisions of the Act, shall come into force on such a date as the Central Government may by notification in the Official Gazette appoint in this behalf. Section 1 deals with the extension of the Act and section 85 provides for the deposit of Trade marks at the Patent Office in advance of the coming into force of sections 2 to 84

As deposit of Trade marks is of immediate interest to the Trade mark owners, this point is dealt with at some greater length in the chapter "DEPOSIT OF TRADEMARK" (see page 7.)

THE AIMS AND OBJECTS OF THE TRADEMARK ACT

For fuller and better understanding of the aims and objects of Trade mark Laws in India, a little retrospect seems to be necessary. Protection hitherto granted to Trade mark owners under the Common Law as well as by the statute law, *viz*, the Indian Penal Code, the Sea Customs Act and the Merchandise Marks Act was neither adequate nor effective. Suits under the Common Law, as experience tells us, are as vexatious as they are expensive. In the absence of registration, one must prove his title to establish his right under Common Law. As title depends on exclusive prior user, it is no easy matter to prove the title. Traders are sometimes prevented from filing a suit under the Common Law by the risk that they run of being ruined in the process of litigation. On the other hand the remedy provided for by the statute Law, such as Indian Penal Code, the Sea Customs Act and the Merchandise Marks Act, is of penal nature. On this point Lord Moulton has observed "Penalties are utterly inefficient for the purpose of preventing bad practices. It is infinitely better to be able to call in the assistance of the Civil Court and get an injunction preventing a bad practice being continued." Secondly in several foreign countries, the production of a certificate of registration in the country of origin is a condition precedent. As there was no Trade mark Law in India, no certificate could be produced and this privilege of registration was denied to the Indians in those countries. Thirdly, in the absence of a Central Registration Office a trader who wishes

to bring a particular mark into use, had no means of knowing whether the mark was not already appropriated. 'After spending much time and money in popularizing the mark, he may discover that another trader has been using it from a earlier date or that it is not sufficiently distinctive to be granted protection under the ordinary Law'.

Finally, the system of voluntary registration, by registration of the Declaration of ownership under the Indian Registration Act, as hitherto the common practice for Trade mark owners, affords 'no legal right but is sometimes of value as secondary evidence of the intention of the registrant to bring his mark into use. These are but a few of the disabilities which the present Trade marks Act seeks to remove. "The Trade marks Act of 1940 provides for more effective protection of the Trade marks in British India. The object of legislation is not to supersede any right but merely provide a better procedure for establishment of title."

(Report on the Registration Trade Marks in India).

SYSTEMS OF TRADE MARK REGISTRATION IN USE IN DIFFERENT COUNTRIES

There are three main systems of Trade mark registration, *viz* :

1. ATTRIBUTIVE SYSTEM
2. BRITISH SYSTEM.
3. DEPOSIT SYSTEM,

1. ATTRIBUTIVE SYSTEM.

Under this system Trade mark rights accrue only by registration. Not the first user but the first registrant that is given protection under this system. • The right to exclusive user in respect of a mark is accorded to the first registrant, though he may happen to be the later user in res-

pect thereof. The more important of the countries, in which this system prevails are Germany, U.S. S.R. and Czechoslovakia. These countries, where attributive system has been adopted, are described as danger spots in so far as trade mark rights are concerned, as in these countries what prevails is the title of the first applicant in respect of a mark and not the title of the first user in respect thereof.

2. BRITISH SYSTEM.

As British system has been adopted in India, a more comprehensive examination of this system seems to be called for. Therefore it is proposed to consider the system in details under the following heads :

(a) *Nature of right conferred by registration :*

Under this system registration *per se* confers no exclusive title. Rights of the prior user are fully protected.

(b) *Person entitled to registration :*

It is the first user, who is entitled to registration.

(c) *Essentials of registration :*

Before registration can be granted, a Trade mark is examined for distinctiveness. A Trade mark that is not distinctive cannot be registered.

Then again, registration is not automatic but open to opposition.

(d) *Effects of registration :*

1. Registration at first gives a *prima-facie* evidence of the title, which becomes absolute after certain years.

2. Registration of a trade mark by a later user does not seriously affect the right of the first user in respect thereof, as the first user, subject to certain limitations is still entitled to use the mark concurrently with the later user registrant.

(b) *Countries where British System Prevails :*

The British system prevails in U.S.A., Japan and now in India.

3. DEPOSIT SYSTEM.

Closely following the British system comes the deposit system, where registration is granted without examination of the mark. In other respects the deposit system is almost allied to the English system. France and Belgium are the principal countries where deposit system prevails.

**SYSTEM OF TRADE MARK REGISTRATION
AND INDIA**

The Indian Trade marks Act of 1940, is based on the British system. The advantages of the adoption of the English Act in India will be that the courts will have the benefits of the decision of the English Tribunal. Besides the difficulties that might otherwise be felt in administering the law will be much minimised.

Comparative Advantages of the three Systems :

In comparing the three systems of registration Dr. Venkateswaran has remarked :

‘It is seen that in so far as rights accruing from registration are concerned the Attributive system confers the “greatest

amount of statutory protection to trade mark owners, the British system comes next, while the Deposit system gives the least protection. But in the matter of rights founded on user, the Attributive system recognises none whatever while such rights are preserved under the other two systems, the British system providing in this respect more effective safeguards than the Deposit system."

CHAPTER II

DEPOSIT OF TRADEMARKS

DEPOSIT : THE IMMEDIATE DUTY

The deposit of trade marks is the immediate interest of Trade mark owners. The Section 85 of the Act which has already come into force provides for the deposit of Trade marks at the Patent Office, in advance of the coming into force of the remaining provisions of the Act.

Deposit of Trade marks will affect no right existing or accruing in the Trade marks. But a press note issued in this behalf by the Central Government foreshadows some benefits to the depositors. The press note runs "It is anticipated that those who will avail themselves of this procedure and deposit their marks in the Patent Office in advance of the coming into force of the whole Act, will derive substantial advantages". The following are the possible advantages, that as anticipated will be derived from deposit of marks.

- (1) For a certain period deposit of Trade marks under this Act will be considered as notice on the Registrar. The Registrar will inform all depositors of marks, in cases where there have been deposits of identical or similar marks in respect of the same class of goods by more than one depositor. This procedure, it is expected, will enable the disputants in case where there is dispute, to establish their title to the mark.
- (2) It is not that all marks that will be deposited will be registered. A mark that is not *distinctive* will not be registered. After the deposit is made, a depositor can obtain from the Registrar his opinion as to the distinctiveness or otherwise of the deposited Trade mark,—in other words, whether or not the mark that is deposited, is registrable.

DEPOSIT AND REGISTRATION OF TRADE MARK.

As already stated, only 2 provisions, namely one that deals with the extension of the Trade marks Act and the other that provides for the deposit of Trade marks, have come into force. It will take sometime before the provisions dealing with the registration of the trade mark under the Act are enforced. Therefore as things are at present constituted, immediate registration of Trade mark, cannot be effected. Instead, there is what is called Deposit of Trade marks which can be immediately acted upon. Though the provision for deposit of Trade mark is as expected, a temporary improviso, important only so long the entire Act is not given effect to, but nevertheless it has its advantages. The deposit as

already noticed facilitates establishment of title to the mark and subsequent registration thereof. Therefore the owners of trade marks will be well advised to deposit their marks and thus safeguard their interests.

PROCEDURE FOR DEPOSIT OF TRADEMARK.*

1. OFFICE AND OFFICER FOR THE DEPOSIT OF TRADE MARKS.
2. WHO MAY APPLY FOR DEPOSIT OF TRADEMARKS.
3. TIME LIMIT FOR DEPOSIT OF TRADEMARKS.
4. FEES AND MANNER OF APPLYING FOR DEPOSIT OF TRADEMARKS.
5. DOCUMENTS REQUIRED FOR DEPOSIT OF TRADEMARKS.

1. OFFICE AND OFFICER FOR THE DEPOSIT OF TRADE MARK.

The office for deposit of Trade Marks is the patent office at Calcutta. The Controller of patents and designs will function as the Registrar of Trade marks. All applications for deposit of Trade marks are to be made to the Registrar of Trade marks, Council House Street, Calcutta.

Provided if the Trade mark to be deposited is in respect of textile goods, as more particularly described in the Schedule annexed below, the application may at the option of the depositor, be made to the Deputy Registrar of Trade marks (Trade marks Registry, Bombay Branch, Bombay).

SCHEDULE.

1. *Yarn and threads.*
2. *Tissues (piece goods) bed covers and table covers.*
3. *The following goods when they are composed to a substantial extent of artificial or natural textile fibres or are complete articles of clothing :—*

*India Gazette, Part I dated 13th July 1940.

Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks, padding and stuffing materials (e.g. hair, capoc, feathers, sea weeds etc) raw fibrous textile materials, clothing, boots, shoes and slippers, lace and embroidery; ribonds and braid, buttons, artificial flowers.

2. WHO MAY APPLY FOR DEPOSIT OF TRADE MARKS.

Any person claiming to be the proprietor of a Trade mark used in British India and intending to apply for its registration under the Trade mark Act 1940, may apply for its deposit in the patent office.

3. TIME LIMIT FOR DEPOSIT OF TRADE MARKS.

Applications for deposit of Trade marks will not be entertained earlier than 1st October 1940 and later than 31st March 1941.

4. FEES AND MANNER OF APPLYING FOR DEPOSIT OF TRADE MARKS.

(1) The applications shall be made in *Duplicate* on printed forms obtained from the Registrar (or, if the application is to be made to the Deputy Registrar, from that officer) on payment of one rupee per set of two forms.

(2) The application shall be signed by the depositor or his authorised agent.

(3) A separate application shall be made in respect of each Trade mark. If the depositor claims to be entitled separately to the exclusive use of a part of Trade mark, he may send a separate application for the deposit of such part.

(4) The language or languages, in which any words or letters occurring in the Trade mark are written, shall be stated in the application. Where the words

or letters are written in a language other than English, the exact translation in English and if necessary an exact translation in Roman Script shall be given in the application.

DOCUMENTS REQUIRED FOR DEPOSIT OF TRADE MARKS.

1. APPLICATION FORM.
2. REPRESENTATIONS.
3. AUTHORIZATION.

1. APPLICATION FORM:—

Vide notes under “*Fees and manner of applying for Deposit of Trade marks*” above.

2. REPRESENTATIONS:—

(a) *Number of Representations.*

Every application for deposit of Trade marks shall be accompanied by *eight* durable representations of the Trade mark exactly similar to one another.

(b) *Size of Representation and other particulars.*

Each representation shall be mounted on a sheet of strong paper, (not card board) 13"×8" in size, bearing on the left hand top corner the name of the depositor and the number of deposit given on the printed forms of application and on the right hand bottom corner the signature of the depositor or his authorised Agent.

3. AUTHORIZATION:—

In case the application for Deposit of Trademark is signed by the Agent, the authority of the Agent to so sign and act must accompany the application. Should the agent be a legal practitioner, a Vakalatnama executed in his favour will serve the purpose.

CHAPTER III

REGISTRABILITY OF TRADE MARK.

Sec. 2 (l) “Trade Mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person.

Sec. 2 (f) “Mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, or numeral or any combination thereof.

KINDS OF TRADE MARKS

1. Defensive Trade Mark.
2. Certification Trade Mark also known as Standardisation or Association Marks.
3. Trade Marks registered as a series.
4. Associated Trade Mark.
5. Cotton or Textile Trade Mark.

1. DEFENSIVE TRADE MARK.

Sec. 38

“We think that when a Trade mark has become identified with the proprietor to such an extent that the use of the mark by others on any goods is likely to create the impression that there may

be some connection' between the goods in question and the proprietor of the mark, it is reasonable that the proprietor should be able to obtain protection for the mark in classes in which he has no intention of using it and we suggest that for this purpose provision should be made for the registration of a form of Trade Mark to be called "Defensive Trade Mark". Having regard to the exceptional nature of the privilege contemplated, we think that the registration of such marks should be restricted to "invented words". (*Extracts from report of Goschen Committee*).

2. CERTIFICATION TRADE MARK ALSO KNOWN AS STANDARDISATION OR ASSOCIATION MARKS.

Where a person undertakes the examination of any goods as to its origin, material, mode of manufacture, quality, accuracy or other characteristics and certifies the result of such examination by a mark used in connection with such goods, the Central Government may in *the public interest* permit such a person to register the mark as a Trade mark in respect of such goods provided always that *such a person does not carry on a trade in goods of the kinds certified*. As the average purchaser cannot test for himself the quality of goods, provision has been made for the registration of such marks so that purchasers may not be deceived by the fraudulent use of marks which serve as a certificate of quality (Nehru report).

Sec. 2 (b)
Chap. viii

3. TRADE MARKS REGISTERED AS A SERIES

Sec. 11

Where a person, claiming to be the proprietor of several Trade marks for the same description of goods, which, while resembling each other in all material particulars, yet differ in respect of the statements of goods, colour and in other non-distinctive particulars, seeks to register such Trade marks they may be registered as a series of one registration. All Trade marks in a series of marks so registered will be deemed to be and will be registered as "Associated Trade Marks".

The registration as a series in one registration of marks, which resemble each other in material respects is designed to secure that in the event of the assignment or transmission of such marks there shall be no deception or confusion resulting from separate ownership, such marks are assignable or transmissible only as a whole and not separately (Nehru Report).

4. ASSOCIATED TRADE MARKS.

Sec. 12

Where a trade mark which is registered or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered or is the subject of an application for registration in the name of the same Proprietor in respect of the same goods or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require

that the Trade Marks shall be entered on the register as Associated Trade marks.' "To associate" means to unite one thing with another. The characteristics of Associated Trade marks are that they shall be assignable and transmissible only as a whole and not separately,—for all other purposes they shall be deemed to be separate marks. In view of the similarity of such marks to one another there will be risk of deception or confusion if they are assigned separately.

5. COTTON OR TEXTILE TRADE MARKS.

Special provisions have been made in the Act for the registration of Cotton or Textile Trade marks. Some restrictions are imposed on the registration of Trade marks on piece goods. To facilitate the registration of Cotton or Textile marks, a Branch Office will be established at Bombay. In other respects the same law which guides the registration of Trade marks in general shall apply here. (*For further particulars see P.34*).

Sec. 62 &
65

WHAT CAN BE REGISTERED AS A TRADE MARK : CONDITIONS OF REGISTRATION.

1. DISTINCTIVE

A Trade mark to be registrable must be distinctive. In other words, a mark to become distinctive must consist of at least one of the following

Essential Particulars :

- (a).. The name of a Company, in- Sec 6
dividual, or firm, represented

in a special or particular manner.

- (b). The signature of the applicant for registration or some predecessors in his business.
- (c). One or more invented words.
- (d). One or more words having no direct reference to the character or quality of goods.
- (e). Any other distinctive mark, provided that a name, signature, or any word other than such as fall within the descriptions in the above clauses (a) to (d), shall not be registrable except upon evidence of its distinctiveness.

Generally a mark falling within one or other of the categories of essential particulars, would become distinctive. "Distinctive" means adapted to distinguish the goods of the proprietor of the Trade mark from those of other persons.

2. REGISTRATION TO BE IN RESPECT OF PARTICULAR GOODS.

Sec. 5

For Trade mark purpose, goods are classified into various classes or series and Trade marks will be registrable only for particular goods or classes of goods. In Great Britain there are as many as 50 different classes of goods. A separate application is required to be filed in respect of each class.

3. LIMITATION AS TO COLOUR.

A Trade mark may be limited wholly or in part to one or more specified colours. Where a Trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours. Sec. 7

WHAT CANNOT BE REGISTERED AS A TRADE MARK.

The following cannot be registered as a Trade mark :

(1). *As regards Design.*

• (a). Scandalous design.

(2). *As regards Matter.*

Sec. 8

(a) Any matter the use of which is likely to deceive or cause confusion;

(b) Likely to hurt the religious susceptibilities of people;

(c) Contrary to any law for the time being in force;

(d) Contrary to morality.

(3) *As regards Words.*

Sec. 9

(a) commonly used and accepted name of any single chemical element or compound in respect of chemical substance or preparation.

- (b) having direct reference to the character or quality of goods

Sec. 6 (d) (4). *As regards Name.*

- | | |
|-----------------------|-------------|
| (a) Geographical Name | } in India. |
| (b) Surname | |
| (c) Name of a sect | |
| (d) Name of a caste | |
| (e) Name of a tribe. | |

Sec. 10 (5) *Identical or similar marks already on the register belonging to a different proprietor in respect of the same goods.*

RESTRAINT ON USE OF ROYAL ARMS AND STATE EMBLEMS.

Sec 69 Without due authority, users in connection with any trade, business, calling or profession of the following, may be restrained by any person, who is so authorised to use them.

- (1) The Royal Arms.
- (2) State Emblems.

REGISTRABILITY OF OLD MARKS UNDER THE NEW ACT.

Sec. 6 The new Trade mark Act provides that a mark cannot be registered unless it is distinctive. What about the old marks that are not distinctive conformably to the Act but nevertheless are being used as Trade marks from a time long before the passing of the Act? As regards such old marks, the Act makes a concession and provides that a mark which

has been used as a Trade mark by the applicant from before the 25th day of February of 1937 and which has been continuously used as such down to the date of application, the Registrar shall not refuse registration by reason only of the fact that the Trade mark is not distinctive or in other words adapted to distinguish and may accept evidence of acquired distinctiveness as entitling the mark to registration.

REGISTRATION OF TRADE MARK,
SUBJECT TO DISCLAIMER,

Where a Trade mark contains—

• (1) Several parts for the separate registration of which no application has been made ; or

Sec. 13.

(2) Any matter common to the Trade; or

(3) Any matter of non-distinctive character, the Registrar in granting registration may require from the proprietor a disclaimer in respect of any such part or any portion of such matter as the case may be, to the exclusive use of which, the Registrar holds him not to be entitled. The object of this provision is calculated to prevent creation of exclusive right of user in non-distinctive parts of a registered Trade mark.

CONCURRENT REGISTRATION OF THE SAME OR
SIMILAR TRADE MARKS.

In case however of honest concurrent use or other special circumstances, the Registrar may at his discretion permit the registration of the same or similar Trade mark

Sec. 10

for the same goods by more than one proprietor subject to such conditions and limitations as to mode or place of user or otherwise as he thinks fit to impose. In explaining the scope and reasons for granting concurrent registration, Mr. R. K. Nehru I.C.S. in his report observes "In the absence of registration concurrent use seems to have become common in India. A conflict of ownership has sometimes been avoided by the limitations of use of identical marks to separate areas. In cases of honest concurrent use, registration may be granted to more than one owner subject to such limitations and conditions as may be imposed by Registering authority. *This will ensure adequate protection to the owners of old Trade marks which are identical with or similar to those which are registered.* As India is a large country the allocation of separate areas to concurrent users seems to present less administrative difficulty".

TRADE MARK REGISTER.

Sec. 4

For the purposes of this Act, there shall be kept at the Patent Office at Calcutta a Trade mark registry and a record called the Register of Trade mark wherein shall be entered all registered Trade marks with names, addresses and description of their proprietors, conditions and limitations etc. etc. This register shall be open to public inspections.

CHAPTER IV.

PROCEDURE FOR REGISTRATION OF TRADE MARKS.

1. THE OFFICE AND OFFICER FOR THE REGISTRATION OF TRADE MARKS.

The office for the registration of Trade marks for the whole of India will be the Patent Office at Calcutta under the control and management of the Controller of the Patents and Designs, who will be called the Registrar of Trade marks for the purposes of the Act. A branch of the Trade mark registry will be established at Bombay for registration only of Textile marks (not, note carefully, marks in respect of other goods). Even in the matter of Textile marks, the Calcutta and the Bombay office shall have concurrent jurisdiction and the registrant public will have the option to register their Textile marks at either place.

**Sec. 4
& 63**

2. WHO MAY APPLY FOR REGISTRATION OF TRADE MARK.

The first user of a mark is entitled to registration. Any one claiming to be the proprietor of a Trade mark may file an application for its registration. Subject to certain restrictions as to user, two or more persons may be registered as the joint proprietors of a trademark.

**Sec. 14 &
17**

3. DOCUMENTS REQUIRED TO BE FILED WITH EACH APPLICATION FOR REGISTRATION.

As in Great Britain so in India, it is anticipated the following documents will be required.

1. Authorization.
2. Application form.
3. Prints of each mark.

4. EXAMINATION.

What happens after an application for registration of a Trade mark is filed in the Patent Office? After an application is filed, it is subjected to examination. The examination may take the following forms. *viz* :—

1. As regards the correctness of the documents filed with the application.

2. As regards whether the mark is inherently a registrable one, that is to say whether it is one that the law does not in some way definitely prohibit such, for example as a word descriptive of the goods for which registration is sought.

3. As to the existence of prior conflicting registrations or applications.

5. ADVERTISEMENT.

Sec. 15. After an application is accepted, it is to be advertised in the Trade mark Journal. In certain special cases there is provision for advertisement even before acceptance.

6. OPPOSITION.

Sec. 15. When there is an attempt for the registration of the Trade mark of one by another, the real owner may oppose such registration

Any person may within one month from the date of the advertisement, lodge a notice of opposition to the registration of the Trade mark setting out the grounds on which he relies to support his notice.

After the applicant's counter-statement has been filed and on the completion of the evidence by the applicant and the opposite party, the Registrar will fix a day for hearing. The decision of the Registrar is not final. It is appealable.

7. CERTIFICATE OF REGISTRATION.

When an application for registration of a Trade mark has been accepted or having been opposed, has been decided in favour of the applicant, the Registrar shall register the said Trade mark. On the registration of a Trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

Sec. 16.

8. TIME LIMIT FOR PROCEEDING WITH AN APPLICATION FOR TRADE MARK.

Where registration of a Trade mark is not completed within 12 months from the date of the application, the Registrar may after giving notice of non-completion consider such application as abandoned unless it is completed within the time specified in that behalf in the notice.

Sec. 16(3)

9. LIMITATION OF TIME FOR ACTION.

The original registration of Trade mark, after the expiration of seven years from the

Sec. 24.

date of original registration thereof be, taken to be valid in all respects.

10. APPEAL.

Sec. 14 &
76

In case of refusal or conditional acceptance of an application for the registration of a Trade mark, the applicant can appeal to the High Court against such decision of the Registrar. Speaking generally, all decisions of the Registrar under the Act will be appealable to a High Court.

CHAPTER V

REGISTRATION AND AFTER

EFFECT OF REGISTRATION

Sec. 21

1. Registration of a person as a proprietor of a Trade mark in respect of any goods, shall, if valid, give to that person exclusive right to the use of the Trade mark in relation to those goods.

Sec. 26

No registration can, however, interfere with any bonafide use by a person of his own name, or place of business or the use by any person of any bonafide description of the character or quality of goods.

Sec. 23

2. Registration which is at first a *prima facie* evidence of validity becomes conclusive as to validity after 7 years from the date of original registration subject to necessary safeguards.

3. No action for infringement shall lie unless a Trade mark is registered. An exception in this behalf, is provided for to the owners of old marks, who have failed to secure registration but have continuously used their marks since before 25th Feb. 1937.

THE UNREGISTERED TRADE MARK AND ITS STATUS.

What is the status of an unregistered Trade mark vis-a-vis a registered Trade mark in respect of the same class of goods in India? Does registration take away all the rights of the proprietor of the unregistered Trade mark used for a number of years in respect of the same class of goods? *The Law on this point in India is that it is the first user and not the first applicant that is entitled to registration.* Take for example, the case of a merchant, who has used a certain Trade mark for a number of years but has failed through neglect or otherwise to register the same. Another merchant, dealing in the same goods, adopts and uses at a *later date* the same or similar mark and then obtains registration thereof. The fact that the latter party has obtained the registration of the mark in question then comes to the notice of the first user. Is there any right left open to the first user, who through neglect or otherwise has not obtained the registration of the mark though he being the first user is entitled under law to the registration thereof? The right of such a first user of unregistered Trade mark may be considered under the following 4 heads : 1. Third party right 2. Cancellation 3. Obtaining concurrent Registration of identical Trade mark and 4. Unregistered Trade mark and action for infringement.

1. THIRD PARTY RIGHT.

Sec. 25

A person, who is a prior user in respect of a Trade mark, will always possess or have status in the mark though unregistered. The proprietor of a registered Trade mark cannot interfere with or restrain the use by any person of a similar Trade mark simply because it is unregistered provided it is continuously used from a date *prior* to the use or registration, by the proprietor of the registered Trade mark.

2. CANCELLATION.

Sec. 46

The second remedy open to the first user of a Trade mark, which has been registered by another, is to apply for its cancellation. On an application made to High Court or the Registrar by any aggrieved person in the prescribed manner the tribunal may make order for expunging or varying the entry as it may think fit, *provided that 7 years have not lapsed from the date of original registration*, when *prima facie* evidence of validity becomes valid in all respects unless such registration was obtained by fraud, or unless the Trade mark is one the registration of which is prohibited by Law.

3. OBTAINING CONCURRENT REGISTRATION OF IDENTICAL TRADE MARK.

Sec. 10 (2)

The other remedy open to the first user of the identical Trade mark, who through neglect or otherwise has not obtained the registration of his mark and in the meanwhile it has been registered by another, may even after 7 years from the date of original registration apply for its registration to the Registrar on the ground of his priority of use. The proprietor of the Regd. Trade mark cannot object (on

such prior use being proved) to registration of that identical or nearly resembling Trade mark in respect of those goods, by the Registrar subject to such conditions and limitations, if any, as the Registrar thinks fit to impose.

4. UNREGISTERED TRADE MARK AND ACTION FOR INFRINGEMENT.

No action for infringement lies unless a Trade mark is registered. But an exception in this behalf, is provided for to the owners of old marks who have failed to secure registration but have continuously used their marks since before 25th Feb. 1937, and have within 5 years from the commencement of the Act applied for its registration and such registration is refused. The Registrar may, on request, grant a certificate that such registration has been refused. But for mark coming into use after 25th Feb. 1937 no action for infringement shall lie, unless the same is registered under the provisions of this Act.

Sec. 20 (1)

The position of a prior user of an unregistered Trade mark vis-a-vis a registered owner of a Trade mark has been summarised as under :—

If the prior user fails to apply for the removal of a registered Trade mark within 7 years, the registration becomes conclusive as to the validity of the registered proprietor's title but the registered proprietor cannot restrain the prior user from continuing to use his mark or prevent him from obtaining concurrent registration. (*Extracts from the Nehru report*).

DURATION AND RENEWAL OF REGISTRATION.

Sec. 18

The registration of a Trade mark shall be for a period of 7 years but may be renewed from time to time in accordance with the provisions prescribed in this behalf.

RECTIFICATIONS AND CORRECTIONS.

Sec. 46

The High Court or the Registrar may either of its own motion or on application by an aggrieved person, cancel or vary registration of a Trade mark on the ground of any contravention of or failure to observe a condition subject to which registration was granted.

Besides, the Registrar may, on application made in the prescribed manner by the registered proprietor of a trade mark,

Sec. 47

- (a) correct any error in the name, address or description of the registered proprietor of a Trade mark;
- (b) enter any change in the name, address or description of the registered proprietor of a Trade mark;
- (c) cancel any entry of a Trade mark on the Register;
- (d) Strike any goods, or classes of goods from those in respect of which a Trade mark is registered;
- (e) enter a disclaimer relating a Trade mark.

CHAPTER VI

USE OF TRADE MARK & REGISTERED USER:

USE OF TRADE MARK.

Must a mark be used in order to maintain the validity of its registration?

Generally speaking and subject, of course, to exceptional circumstances as in defensive Trade mark and a company to be floated, a mark must be used in order to maintain the validity of its registration. The law contains provisions whereby if a mark is not used the registration will either automatically cease or on the contrary, be open to attack by a third party, who may apply for its cancellation on the ground of its non-use by the proprietor. It is therefore necessary for the preservation of the exclusive right to the mark that the goods bearing the registered Trade mark be traded in.

Sec. 37

REGISTERED USER OF A TRADE MARK.

Registration is granted to the proprietor of the Trade mark, who alone is authorised to use the mark. But the conditions of modern industry sometimes demand that a person other than the owner of the Trade mark but closely associated with him should be allowed to use the latter's mark. It frequently happens that while the manufacturer only produces the goods, the agent effects the sale of the goods so manufactured. If the manufacturer is the owner of the Trade mark, the Agent is the user of it. Lest such user by the Agent should invalidate the mark on the ground that it no longer

Sec. 39

distinguishes the goods of the proprietor, it is specifically provided that a person other than the proprietor of a Trade mark may be registered as a registered user thereof. While the ownership of the mark vests in the proprietor, the use by the registered user shall be considered to be use by the proprietor. The registered user, in the absence of agreement to the contrary, has power to take proceedings against infringement but no right of assignment or transmission. The use of a trade mark by registered user is known as "Permitted Use".

CHAPTER VII

INFRINGEMENT *

WHAT IS INFRINGEMENT

Subject to certain exceptions, the registration of a trade mark, if valid, gives the owner, the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered, and any invasion of this right is an infringement of the Trade mark. It is probable that to constitute infringement there must be an actual use of the mark upon something.

WHAT CONSTITUTE INFRINGEMENT

'Two classes of acts constitute infringement viz, user in the course of Trade in relation to such goods so as to deceive or cause confusion

*Halsbury's Laws of England.

either as a Trade mark or so as to import a reference to the proprietor, or a registered user, or to goods with which either is connected in the course of trade'.

WHAT DOES NOT CONSTITUTE INFRINGEMENT

There is no infringement :—

- (1) If the goods are to be sold or traded in a place to which the registration does not extend;
- (2) Where the use is by a person who can prove continuous user by himself or his predecessors in title prior both to the registration and user by the proprietor or his predecessors in title;
- (3) Where by reason of honest concurrent user or other circumstances the defendant is entitled to be registered for the mark he has used;
- (4) Where there is a *bonafide* use by a person of the name, or the name of the place of business, of either himself or any of his predecessors in business;
- (5) Where there is a use by any person of a *bondafide* description of the character or quality of his goods;
- (6) Where two similar marks are registered, the use of one in exercise of the right given by registration is not deemed an infringement of the other';

TEST OF INFRINGEMENT

‘What is protected is the whole mark as registered. The use of part of a mark is not generally an infringement. In substance, the test is whether or not the mark used by the infringer is likely to be confused with that registered.

CHAPTER VIII.

ASSIGNMENT.

Secs. 28, 29

A proprietor of a Trade mark may subject to certain restrictions, assign his mark whether in connection with the good will of a business or not and in respect either of all the goods in respect of which it is registered or some only of those goods.

CONDITIONS FOR ASSIGNMENT

Sec. 33

Where assignment is without the good will of the business, it shall not take effect unless the assignee within six months from the date of assignment, apply to the Registrar for his directions as regards advertisements etc.

REGISTRATION OF ASSIGNMENTS AND TRANSMISSIONS

Sec. 35

Where a person becomes entitled to a registered Trade mark by assignment, transmissions or other operations of Law, the Registrar will on request made in the pres-

cribed manner and on proof of title to his satisfaction, have the name and address of such a person to be entered on the register as the proprietor of the Trade mark.

ASSIGNMENT OF CERTIFICATION TRADE MARK AND ASSOCIATED TRADE MARK

A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Central Government.

Sec. 34

Associated trade mark shall be assignable or transmissible only as a whole and not separately.

ASSIGNABILITY OF UNREGISTERED TRADE MARK

Unregistered trade marks may as well be assigned like the registered Trade marks. But the assignment of an unregistered trade mark without the good will, is permitted if at the same time registered Trade mark in respect of the said goods is assigned or transmitted to the same person.

Sec. 30

CHAPTER IX

SPECIAL PROVISIONS FOR TEXTILE GOODS.

CLASSIFICATION

Sec. 62 Textile goods shall be classified into different classes, and registration must be in respect of one or the other class.

PROCEDURE FOR REGISTRATION OF TEXTILE MARKS

Sec. 62 The same provisions, which determine the registration of Trade marks in relation to other classes of goods, shall apply here.

OFFICE AND OFFICER FOR THE REGISTRATION OF TEXTILE MARKS

Sec. 63 There shall be established at Bombay a branch of the Trade mark Registry. The officer in charge of the branch shall be called the Deputy Registrar. Applications for registration of a Trade mark in respect of textile goods may be made either to the Registrar, at Calcutta or the Deputy Registrar, Bombay at the option of the applicant.

RESTRICTION ON REGISTRATION OF TEXTILE GOODS

Sec. 64

In respect of textile goods *being piece goods*:—

- (a). No mark consisting of a line heading alone shall be registrable as a Trade mark.

(b). the registration of letters or numerals or any combination thereof, shall be subjected to such conditions and restrictions as may be prescribed.

CHAPTER X

OFFENCES AND PENALTY

Any false representation :—

- (a) with respect to a mark not being registered Trade mark, to the effect that it is a registered trade mark ; or

Sec. 68
- (b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or
- (c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered ; or
- (d) to the effect that registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not in fact give the right ;

shall be made punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 500/- or with both.

CHAPTER XI

MISCELLANEOUS.

FEEES

Sec. 81

There shall be paid in respect of applications and registration and other matters under this Act, such fees as may be prescribed by the Central Government. The scale of fees is still under the consideration of Government.

AGENTS

Sec. 80

In any proceedings under this Act, a person may be represented by a duly authorised agent, being either a legal practitioner or by a person, registered in the prescribed manner as a Trade marks Agent. The manner of the registration of Trade Mark Agents, has not been prescribed. It is awaiting the decision of the Central Government.

SUITS FOR INFRINGEMENT

Sec. 73

No suit for the infringement of a trade mark, shall be instituted in any Court inferior to a district Court having jurisdiction to try the suit.

REGISTRATION OF WRAPPERS AND CONTAINERS
UNDER THE TRADE MARK ACT

“Trade marks intended to be applied to wrappers are registrable. We understand that the present practice of the Patent Office is to accept for registration wrappers consisting of several panels, *provided each panel contains some distinctive feature*”(Goschen Committee). Mr. R. K. Nehru I.C.S. makes the following observations in his report on this subject. “The Committee (Goschen Committee) held that, multi-panelled marks, used in the form of wrappers are already protected while grant of monopolies for the shape of a particular container might prove embarrassing to the traders or the public. It seems doubtful, however, whether the general get-up of a package in which goods are sold can properly be admitted to registration. The get-up of a package generally consist of features which are not only capable of precise definition but are also subjected to frequent changes. I cannot, therefore, recommend any widening of the scope of registration, in any case not for the first few years for the operation of the scheme. This will not leave distinctive packings unprotected as the common Law remedy will still be available in such cases.”

TRADE MARKS ACT.

Act No. V of 1940.

An Act to provide for the registration and more effective protection of Trade Marks.

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks ;

It is hereby enacted as follows :—

CHAPTER 1.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Trade Marks Act , 1940.

(2) It extends to the whole of British India.

(3) This section and section 85 shall come into force at once ; the remaining provisions of the Act shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

Definitions

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act ;

(b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter

VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person ;

- (c) “District Court” has the meaning assigned to it in the Code of Civil Procedure, 1908 V. of 1908.
- (d) “High Court” means a High Court as defined in sub-section (1) of section 219 of the Government of India Act, 1935 ; 26 Geo. V,
Ch 2.
- (e) “limitations” (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in within British India, or as to use in relation to goods to be exported to any market outside British India ;
- (f) “mark” includes a device brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof ;
- (g) “permitted use” means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject ;
- (h) “prescribed” means prescribed by rules made, in relation to proceedings before a High Court, by such High Court, and in other cases, by the Central Government ;
- (i) “registered” (with its grammatical variations) means registered under this Act ;

- (j) “registered trade mark” means a trade mark which is actually on the register ;
- (k) “registered user” means a person who is for the time being registered as such under section 41 ;
- (l) “trade mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person ;
- (m) “transmission” means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfers, not being assignment ;
- (n) “tribunal” means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation, whatsoever, to such goods.

Application
of other
laws not
barred.

3. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

CHAPTER II

THE REGISTER AND CONDITIONS FOR REGISTRATION

4. (1) For the purposes of this Act there shall

be established at the Patent Office a Trade Mark Registry, and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar.

The register of trade marks.

(2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Controller of Patents and Designs, who shall for the purposes of this Act be called the Registrar of Trade Marks and is in this Act referred to as the Registrar.

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

5. (1) A trade mark may be registered only in respect of particular goods or classes of goods.

Registration to be in respect of particular goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

6. (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:—

Distinctiveness requisite for registration.

(a) the name of a company, individual, or firm, represented in a special or particular manner;

- (b) the signature of the applicant for registration or some predecessor in his business ;
- (c) one or more invented words ;
- (d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India ;
- (e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is (or may be) connected in the course of trade from goods in the case of which no such connection subsists either generally or, where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

- (a) the trade mark is inherently so adapted to distinguish, and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish:

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date prior to the 25th day of February, 1937, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

7. (1) -A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

Limitation
as to colour.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

8. No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

Prohibition
of registra-
tion of
certain
matter.

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a Court of justice;

or

(b) be likely to hurt the religious susceptibilities of any class of His Majesty's subjects;

or

(c) be contrary to any law for the time being in force or to morality.

Use of
names of
chemical
elements
barred.

9. No word which, is the commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration shall, notwithstanding any thing in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require:

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

Prohibition
of registra-
tion of
identical or
similar trade
mark.

10. (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so nearly resembles such trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks which are identical or

nearly resemble each other, in respect of the same goods, or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

11. (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

Registration
of parts of
trade marks
& of Trade
Marks as a
series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of, an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods in relation to which they are respectively used or proposed to be used ; or
- (b) statements of number, price, quality or names of places ; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark ; or
- (d) colour ;

seeks to register those trade marks, they may be registered as a series in one registration.

12. (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if

Associated
trade marks

used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(3) All trade marks registered in accordance with the provisions of sub-section (3) of section 11 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

13. If a trade mark contains—

Registration
subject to
disclaimer.

- (a) any part not separately registered as a trade mark in the name of the proprietor, or for the separate registration of which no application has been made, or
 - (b) any matter common to the trade, or otherwise of a non-distinctive character,
- the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the

register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled, or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration :

Provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

CHAPTER III

PROCEDURE FOR, AND DURATION OF, REGISTRATION

Application-
for registra-
tion.

14. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

15. (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the

Opposition
to registra-
tion.

Registrar shall, as soon as may be after acceptance, cause the application as accepted, together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner :

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall serve in the prescribed manner a copy thereof on the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant

against any order of the Registrar under section 14 or this section, neither resides nor carries on business in British India, the tribunal may require him to give security for costs of the proceedings before it, and in default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

16. (1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Central Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any directions made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration. Registration

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

17. (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

Jointly
owned trade
marks.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

- (a) on behalf of both or all of them, or
- (b) in relation to an article with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Duration
and renewal
of registra-
tion.

18. (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as “the expiration of the last registration”).

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

19. Where a trade•mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

Effect of
removal
from register
for failure to
pay fee for
renewal.

- (a) that there has been no *bonafide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

CHAPTER IV.

EFFECT OF REGISTRATION.

20. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 25th day of February, 1937, by such person or by a predecessor in title of his and unless an application for its registration, made within five years from the commencement of this Act, has been refused; and the Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

No action
for infringe-
ment of
unregistered
trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

Right
conferred by
registration.

21. Subject to the provisions of sections 22, 25 and 26 the registration of a person in the register as proprietor of a trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being use as a trade mark; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

No infringement
in
certain Cir-
cumstances.

22. (1) The right to the use of a trade mark given under section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

23. In all legal proceedings relating to a registered trade mark, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration to be *Prima facie* evidence of validity.

Registration
to be conclu-
sive as to
validity
after seven
years.

24. In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

Saving for
vested
rights.

25. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his,

whichever is the earlier, or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

Saving for
use of name,
address or
description
of goods.

26. No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

27. (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance :

Words used
as name or
description
of an article
or substance.

Provided that, if it is proved either—

(a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor ; or,

(b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cesser of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance,—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then—

(a) for the purposes of any proceedings under section 46—

(i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register ;

(ii) if the trade mark contains such words

and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made ;

(b) for the purposes of any other legal proceedings relating to the trade mark,—

(i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains such words and other matter, all such rights of the proprietor to the exclusive use of such words, in such relation as aforesaid, shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (1) first became well-known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

CHAPTER V.

ASSIGNMENT AND TRANSMISSION.

28. The person for the time being entered in the register as proprietor of a trade mark, shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

Power of registered proprietor to assign and give receipts.

29. Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods.

Assignability of registered trade marks.

30. An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not :

Assignability of unregistered trade marks.

Provided that, except in connection with the goodwill of a business, assignment or transmission shall be permissible only, if—

- (a) at the time of assignment or transmission of the unregistered trade mark it is used in the same business as a registered trade mark, and
- (b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and
- (c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

Restriction
on assign-
ment or
transmission
where multi-
ple exclusive
rights would
be created.

31. (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion :

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within British India (otherwise than for export therefrom), or in relation to goods to be exported to the same market outside British India.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under sub-section(1) of the assignment in so far as such validity or invalidity depends

upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

32. Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in British India and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in British India:

Restrictions on assignment or transmission when exclusive rights would be created in different parts of British India.

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming

entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

Conditions for assignment otherwise than in connection with the goodwill of a business.

33. Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Conditions for assignment and transmission of Certification trade marks and associated trade marks.

34. (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Central Government, for which application shall be made in writing in the prescribed manner through the Registrar.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

Registration of assignments and transmissions.

35. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

CHAPTER VI.

USE OF TRADE MARKS AND REGISTERED USERS.

36. (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Indian Companies Act, 1913, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed
use of trade
mark by
company to
be formed.

VII of 1913.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company

has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

Removal
from regis-
ter and
imposition
of limita-
tions on
ground of
non-use.

37. (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, on the ground either—

(a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application ; or

(b) that up to a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bonafide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly

be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bonafide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in British India (otherwise than for export from British India), or in relation to goods to be exported to a particular market outside British India, and

(b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to a High Court or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

Defensive
registration
of well-
known
trade
marks.

38. (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first mentioned goods then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37, the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

39. (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

Registered
users.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for any purpose for which such use is material under this Act or any other law.

Power of registered user to take proceedings against infringement.

40. (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

Application for registration as registered user.

41. (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor, or by some person authorised to the satisfaction of the Registrar to act on his behalf,—

- (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there

shall be any other restriction as to persons for whose registration as registered users application may be made;

(b) stating the goods in respect of which registration is proposed ;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter;

(d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof ;

and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid ,the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information

given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rivals in trade.

(5) The Registrar shall issue notice in the prescribed manner—

- (a) of the registration of a person as a registered user, to any other registered user of the trade mark;
- (b) of an application under section 42, to the registered proprietor, and each registered user, (not being the applicant) of the trade mark.

Power to Registrar to vary or cancel registration as registered user.

42. Without prejudice to the provisions of section 46, the registration of a person as a registered user—

- (a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark ;
- (b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ;
- (c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely :—
 - (i) that the registered user has used the trade mark otherwise than by way

of the permitted use, or in such a way as to cause or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested ;

(d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

43. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Registered user not to have right of assignment or transmission.

44. (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

Use of one of associated or substantially identical trade marks equivalent to use of another.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with subsection (1) of section 11 in the name of the same proprietor.

Use of trade
mark for
export
trade, and
use when
form of
trade con-
nection
changes.

45. (1) The application in British India of a trade mark to goods to be exported from British India, and any other act done in British India in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within British India would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

CHAPTER VII.

RECTIFICATION AND CORRECTION OF THE REGISTER.

Power to
cancel or
vary regis-
tration and
to rectify
the register.

46. (1) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause,

or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to a High Court or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) A High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

47. (1) The Registrar may, on application made in the prescribed manner by the registered proprietor,— **Correction of register.**

- (a) correct any error in the name, address or description of the registered proprietor of a trade mark ;
- (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark ;
- (c) cancel the entry of a trade mark on the register ;

(d) strike out any goods or classes of goods from those in respect of which a trade mark is registered ;

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change in the name, address or description of the registered user.

**Alteration
of registered
trade mark.**

48. (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the trade mark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

49. (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods :

Adaptation of entries in register to amended or substituted classification of goods.

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition or antedating , as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

CHAPTER VIII.

CERTIFICATION TRADE MARKS.

50. Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

Provisions of this Act applicable to certification trade marks.

51. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

Certification trade mark not to be registered in name of person trading in goods certified thereby.

Determina-
tion whether
a mark is a
certification
trade mark.

52. In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

- (a) the mark is inherently so adapted to distinguish in relation to the goods in question ; and
- (b) by reason of the use of the mark or of any other circumstances , the mark is in fact so adapted to distinguish in relation to the goods in question.

Application
for registra-
tion.

53. (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant as if the application were an application under section 14 and to any other considerations (not being matters within the competence of the Central Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

54. When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Central Government who shall consider the application with regard to the following matters, namely :—

Consideration of application or registration by Central Government.

- (a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered ;
- (b) whether the draft of the regulations to be deposited under section 56 is satisfactory ;
- (c) whether in all the circumstances the registration applied for would be to the public advantage ;

and may either—

- (i) direct that the application shall not be accepted ; or
- (ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters; but, except in the case of a direction for acceptance and approval without modification and un-conditionally, the Central Government shall not decide the matter without giving to the applicant an opportunity of being heard :

Provided that the Central Government may, at the request of the applicant made with the

concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so however that the Central Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

Opposition
to registra-
tion.

55. (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14 :

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Central Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54.

(2) When notice of opposition is given relating to any of the matters referred to in section 54, the Central Government shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters, to be permitted.

56. (1) There shall be deposited at the Patent Office in respect of every mark registered as a certification trade mark regulations approved by the Central Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Central Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulations); and regulations so deposited shall be open to inspection in like manner as the register.

Deposit of regulations governing the use of a certification trade mark.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Central Government.

(3) The Central Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Central Government shall not decide the matter without giving the parties an opportunity of being heard.

57. Subject to the provisions of sections 25, 26 and 58, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any

Right conferred by registration.

person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

- (a) as being used as a certification trade mark ; or
- (b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

No infringement in certain circumstances.

58. (1) The right to the use of a certification trade mark given under section 57 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

- (a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant

regulations has applied the mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or

- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor :

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more registered certification trade marks which are identical or nearly resemble each other, the use of any of those marks in exercise of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

59. (1) The Central Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation,

Cancellation
or varying
of registra-
tion.

make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely :—

- (a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered, to certify those goods ;
- (b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part ;
- (c) that it is no longer to the public advantage that the mark should be registered ;
- (d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied ;

and neither a High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under sub-section (1).

Costs
not to be
awarded in
certain
cases.

60. The Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

Decisions of
Central
Government
to be final.

61. Save as otherwise expressly provided in this Chapter, every decision of the Central Government under this Chapter shall be final.

CHAPTER IX.

SPECIAL PROVISIONS FOR TEXTILE GOODS.

62. The Central Government shall prescribe classes of goods (in this Chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

Textile goods.

63. (1) There shall be established at Bombay, for the purpose of facilitating the registration of trade marks in respect of textile goods, a branch of the Trade Marks Registry. The officer in charge of the branch shall be called the Deputy Registrar.

Branch of Trade Marks Registry at Bombay and Textile Marks Record.

(2) There shall be kept at the said branch for the purposes of this Act a record called the Textile Marks Record wherein shall be entered copies of all entries in the register relating to trade marks registered in respect of textile goods and the said record shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

(3) Trade marks in respect of textile goods of which registration has been refused shall be entered in a list called the Refused Textile Marks List, a copy of which shall be kept at the said branch, and the list and the said copy shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

64. In respect of textile goods being piece goods—

Restrictions on registration of piece goods.

- (a) no mark consisting of a line heading alone shall be registrable as a trade mark ;
- (b) a line heading shall not be deemed to be adapted to distinguish ;
- (c) the registration of a trade mark shall not give any exclusive right to the use of a line heading ;
- (d) the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.

Registration.

65. (1) Applications for the registration of a trade mark in respect of textile goods may be made either to the Registrar or the Deputy Registrar at the option of the applicant.

(2) In respect of all trade marks, applications for registration of which are duly made to the Deputy Registrar under this chapter, the Deputy Registrar shall exercise all the powers of the Registrar under this Act but shall be subject to the general superintendence of the Registrar.

Advisory Committees.

66. (1) The Central Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

(2) The Registrar or the Deputy Registrar shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

CHAPTER X.

OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

67. If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in register.

68. (1) From such date, not being earlier than one year from the commencement of this Act, as the Central Government may, by notification in the official Gazette, appoint in this behalf, no person shall make any representation—

Penalty for falsely representing a trade mark as registered.

- (a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or
- (b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or
- (c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered; or
- (d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations

entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in British India in relation to a trade mark of the word 'registered', or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

- (a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside British India, being a country under the law of which the registration referred to is in fact in force ; or
- (b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a) ; or
- (c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside British India and in relation solely to goods to be exported to that country.

69. If a person, without due authority, uses in connection with any trade, business, calling or profession—

Restraint of
use of Royal
Arms and
State
emblems.

- (a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or
- (b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, His Majesty's Government or the Central Government or any Provincial Government or any department of any such Government.

he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title or of the Registrar, be restrained by injunction from continuing so to use the same.

CHAPTER XI.

MISCELLANEOUS.

70. In all proceedings under this Act before the Registrar—

Procedure
before the
Registrar.

- (a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses ;

- (b) evidence shall be given by affidavit, provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit ;
- (c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard ;
- (d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a Civil Court.

Procedure
before
Central
Government

71. In all proceedings under this Act before the Central Government, evidence shall be given by affidavit, provided that the Central Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

Procedure
in certain
cases of
option to
apply to a
High Court
or the
Registrar.

72. Where under this Act an applicant has the option of making an application either to a High Court or to the Registrar,—

- (a) if any suit or other proceedings concerning the trade mark in question is pending before a High Court or a District Court, the application shall be made to that High Court or, as the case may be, to

the High Court within whose jurisdiction that District Court is situated ;

- (b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to a High Court.

73. No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Suits for infringement to be instituted before District Court.

74. (1) In any suit or other legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.

Appearance of Registrar in proceedings involving rectification of register.

(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the Patent Office in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit or other proceeding.

(3) The costs of the Registrar shall be in the discretion of the tribunal, but the Registrar shall not be ordered to pay the costs of any of the parties.

75. (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts

Evidence of entries in register and things done by Registrar

in British India and in all proceedings without further proof of production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

Appeals.

76. (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar or Deputy Registrar under this Act or the rules made thereunder to the High Court having jurisdiction :

Provided that if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court, the appeal shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open, save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be ; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(3) Subject to the provisions of this Act and of rules made thereunder, the provisions of the Code of Civil Procedure of 1908, shall apply to appeals before a High Court under this Act. V of 1908.

77. A High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it. Power to High Courts to make rules.

78. If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a decision is given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client. Certificate of validity.

79. In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons. Trade usage, etc., to be taken into consideration.

80. Where by or under this Act, any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Central Government, be done, in lieu of by that person himself, by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as a trade marks agent. Agents.

Fees.

81. There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the Central Government.

Crown to be bound.

82. The provisions of this Act shall be binding on the Crown.

Power to make reciprocal arrangements with other Governments.

83. If at any time after the expiry of six months from the commencement of this section it is made to appear to the Central Government that any Government outside British India has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in British India, the Central Government may, by notification in the official Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in British India under this Act on his making an application for registration in British India within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

Power of Central Government to make rules.

84. (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the classification of goods for the purpose of the registration of trade marks, and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed ;
- (b) require the making of duplicates of trade marks and other documents connected therewith ;
- (c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith ;
- (d) prescribe additional matters to be entered in the register ;
- (e) prescribe the conditions and restrictions subject to which the register, the Textile Marks Record and the Refused Textile Marks List may be inspected ;
- (f) prescribe the form of certificates of registration ;
- (g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18 ;
- (h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41 ;

- (i) prescribe classes of goods as textile goods for the purposes of Chapter IX ;
- (j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees ;
- (k) regulate the awarding of costs by the Registrar under section 70 ;
- (l) prescribe the conditions subject to which an agent referred to in section 80 may act ;
- (m) prescribe the fees to be paid under this Act ;
- (n) provide for the establishment of branches of the Trade Marks Registry when expedient for facilitating the working of this Act, and authorise the preparation of copies of the register to be kept at such branch offices ;
- (o) prescribe the manner in which, in proceedings under this Act, before the Central Government or the Registrar, applications shall be made, notices given and matters advertised ;
- (p) prescribe times or periods required by this Act to be prescribed ;
- (q) provide, generally, for regulating the business of the Trade Marks Registry and of branches established under clause (n) or under section 63, and for regulating all things by this Act placed under the

direction or control of the Central Government or the Registrar.

85. The Central Government may, by notification in the official Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this Act:

Power to Central Government to make provision for applications for registration before the coming into force of the remaining provisions of Act.

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing in the trade mark.



PART II

TRADE NAMES

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ARTIST
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CHAPTER I.

TRADE NAMES IN GENERAL

RIGHT TO TRADE NAMES IS A COMMON LAW RIGHT.

In India there is no system of registration of trade names nor is there any provision for a statutory title to the same. The rights of parties setting up rival claims are determined in accordance with the principle of the English Common Law.

THE NATURE OF THE COMMON. LAW RIGHT.

The only right that Common Law recognises in any trade name is the right of a person to use such trade name to prevent others using the same so as to deceive the public into thinking that the business carried on by such persons or the goods sold by them are his. No man may represent his business as another's or his goods as another's. To the first proposition there is one necessary limitation viz. that any man is entitled to trade honestly in his own name ; to the second there is no limitation (41.R.P.C.277).

INFRINGEMENT OF TRADE NAMES.

“This Common Law right is infringed when a defendant has knowingly done that which would pass off other goods or another business as and for the goods or business of the plaintiff”.

“Since the courts only intervene where the plaintiff can show that the defendant's action may endanger his goodwill, the area

and class of the trade may be of great importance. It is not however necessary that these should actually overlap, and protection will be afforded when the defendant is selling goods which are of so similar a nature to that of the plaintiff that a purchaser might infer a common origin. The Courts will also restrain a defendant whose actions may discredit the plaintiff's goodwill or may lead to confusion in the case of persons supplying goods." (Halsbury's Laws of England).

KINDS OF TRADE NAMES.

The trade names may be of the following kinds :

1. TRADE NAMES OF BUSINESS
 2. TRADE NAMES OF GOODS
-

CHAPTER II.

I. TRADE NAMES OF BUSINESS

The name and style under which a person carries on his business is called the *Trade name* of his business or *business name* or simply the *trading name*. A business may be carried on under the name and style of

- (1). one's own individual name, as, Joseph Rodgers, John Prinsmead ;
- (ii). a firm, either single proprietorship or in partnership as, The Calcutta Trade mark Co, G. C. Roy & Co.
- (iii). a company, as, Dunlop Motor Co., Ltd., Illustrated Newspapers Ltd.

LIMITATIONS ON USE OF TRADE NAMES OF BUSINESS

(a) IN ONE'S OWN NAME.

The court does not generally interfere with a man's right to trade under his own name even though it be the name of a better known competitor.

(b) LOCAL NAMES.

The court is reluctant to permit a person to get the monopoly of local names so as to prevent other persons from using the name of such locality as a part of their trade name. An injunction to stop the defendant by the plaintiff was refused where the plaintiff traded as "Kelvinside Chemical Co" defendants as "Kelvindale Chemical Co". Kelvinside is the name of a place, (1909, 26 R. P. C. 775).

(c) DESCRIPTIVE NAMES.

What is true of "local names" is true of descriptive names, in general. Where the name under which a person trades is a descriptive one, the court is unwilling to interfere even when another person has taken a name very closely similar to that of the former. An injunction by the plaintiff to stop the defendant was refused where the plaintiff traded as "American Shoe Co.," defendants as "Anglo-American Shoe Co" (1907, 24 R.P.C. 657).

(d) FANCY NAME.

Where the name and style under which the business is carried on is a fancy

name, the Court as a general rule intervenes to prevent another person using the said trade name, if there is a chance of confusion. When the plaintiff traded as "Kodak Co. Ltd," the defendant as "Kodak Cycle Co. Ltd". the defendant was restrained. (1898, 15 R.P.C. 105.)

(e) **COMPANY.**

There is a statutory provision preventing a limited company from being registered with a name closely resembling that of a company already registered so as to cause confusion.

CHAPTER III

TRADE NAMES OF GOODS.

LIMITATION ON USE OF TRADE NAMES OF GOODS.

(a) **ONE'S OWN NAME.**

A manufacturer may acquire exclusive right of user in his own name as attached to and distinctive of his goods, "AVERY" for weighing machines; "ENO" for fruit salts; "THORNYCROFT" for motor cars; "CADBURY" for confectioneries are a few of the instances on the point, how manufacturers used their own names as Trade names of their goods, and acquired right of exclusive user thereon.

(b) **LOCAL NAMES.**

The Courts are reluctant to grant exclusive right of user in respect of trade names of goods, which are local names. This is particularly the case, where the commodity sold is a *natural product* of the locality

Monopoly of use of such Trade names of goods as “ Rugby Cement ”, “ Spanish Graphite ” “ Caledonia Water ”, was denied, whereas monopoly in respect of such trade names of goods as “ Glenfield Starch ” “ Reading Biscuits ” “ Yorkshire Relish ” “ Hunyadi ”, “ Worcester China ” was allowed

(C) DESCRIPTIVE NAMES.

Monopoly cannot be granted in respect of the use of names of descriptive character unless on proof of their having acquired a secondary meaning. Exclusive right of use in respect of trade names of goods as “ Excelsior White Soap ” “ Fruit Salt ” “ Camel Hair ” “ Liebiges extract of Meat ” “ Black Drink ” “ Silverpan ” “ Vaccum Oil ” “ Horse shoe Boilers ” has been recognised whereas the same has been denied for “ Nourishing Stout ” “ Flaked Oatmeal ” “ Naptha Soap ” “ Erect Form ” “ Malted Milk ”. “ Shreded Wheat ” etc.

(d) FANCY NAMES.

Where the name chosen for the goods is a fancy one, the Court will generally grant monopoly on proof of sufficient user.

CHAPTER IV

MISCELLANEOUS

REGISTRATION OF TRADE NAMES.

In India, there is no Law for registration of trade names of business or goods. It is a Common Law right. Title is the determining factor in such a case. As title depends on

exclusive prior user, it is very difficult to adduce evidence in proof of such prior user. *In circumstances like these, the public will be well advised to get the (1) Trade names of business & (2) Trade names of goods, registered with the Registrar of Assurances under the Indian Registration Act in the form of a Declaration of ownership.* The value of such registration of declarations of ownership under the Indian Registration Act, lies in this that it is a secondary evidence of the intention of the registrant to bring them into use. This document establishes beyond doubt the date at which action was first taken to protect them and would be admitted as evidence in a Court of Law in any subsequent litigation.

TRADE MARKS AND TRADE NAMES CONTRASTED.

As already noticed, the Trade names may be of 2 kinds, viz, (1) Trading name—the name and style under which a person carries on his business as “American Shoe Co,” “Trade extension Co” etc and (2) Trade name of goods as “Malted Milk” “Cadbury” “Thornycroft” etc.

There is no scope for confusion between the Trade name and Trade mark when the former is a Trading name as “American Shoe Co ” but if instead of a trading name the trade name represents the name of a particular class of goods as “Thornycroft” (for motor cars) “Cadbury” (for confectioneries) distinction between the two becomes difficult. And this is particularly so, if the trade “name of the goods is a distinctive one. In this connection it will do well to

remember that while the Trade name is the name of goods, the Trade mark is a symbol, which being applied to a trader's goods distinguishes them from similar goods of other traders and identifies them as his goods.

**RELIEF FOR INFRINGEMENT OF
TRADE NAMES.**

Criminal action apart, an infringement of a valid Trade name gives rise to an action for an injunction and to damages or an account of profits.

PART III

DESIGN

CHAPTER I.

REGISTRABILITY OF DESIGN.

WHAT IS A DESIGN.

We often hear of such things as design of a cloth, design of a chair, design of a table etc. But what does a design mean? Design relates to the features of the shape, configuration, pattern or ornament applied to any article. Briefly stated, design is the appearance given to any *article*. Of the design, eye is the sole judge. Design is objective. It is that picture which appeals to the eye. The object and utility of the article cannot, therefore come within the scope of design; nor the principle of construction of the article, or its working, falls within the purview of the design. They are the subject matters of Patent rights. A Design is so distinct from a Trade mark that chances of confusion of one with the other, are very remote. Section 2 (5) of the Indian Patents and Designs Act, 1911 defines design as: "Design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device and does not include any trade mark as defined in Section 478, or property mark as defined in Section 479, of the Indian penal Code;

The definition of design will be incomplete without the definition of the article. In the Act, the article is defined as : "Article" means (as respects designs) any article of manufacture and any substance, artificial or natural or partly artificial and partly natural. A building is not an article.

DISTINCTION BETWEEN A DESIGN AND A TRADE MARK.

The design is concerned with the appearance of an article as it appears in a finished state . It covers the whole body of goods. It is that picture of an article that appeals to our eyes. On the other hand, a trade mark is a mark apart, different from the goods or articles supplied for denoting the goods or articles to be the manufacture or merchandise of a particular person.

CONDITIONS OF REGISTRATION OF DESIGNS.

1. "New" or "Original"

A Design which is "new" or "original" can alone be registered. There is no definition of the terms "New" or "Original" in the Act. It is a question of fact whether a design is "new" or "original" . Common place articles, and articles lacking in originality cannot be accepted for registration. "No registration is effective, unless the design is new and original and not of pre-existing common type" 77. Ind. cas. 317.

2. Prior Publication.

A design must not have been published in British India prior to regis-

tration except for purposes of industrial or international exhibitions. The registration of the design in one class is not however considered as a publication so as to affect the permissibility of subsequent registration of the design in another class. "A disclosure to another person in confidence or the publication of a design in good faith, or in case of textile designs, the acceptance of a first and confidential order for goods does not invalidate subsequent registration" (Halsbury's Laws of England)

3. *Registration to be in Respect of a Particular Class.*

For the purpose of registration of designs applicable to articles, goods are classified into various classes as particularly shown in the Fourth Schedule of the Act. (see page 119) When it is desired to register the same design in more than one class, a separate application shall have to be made for registration in each class. There is no protection against infringement in respect of a class with reference to which the design has not been registered. In case of doubt as to the class to which any particular goods belong, it shall be decided by the Controller.

4. *Registration Subject Disclaimers.*

See under head "*Representation*"
in page 115.

5. *Applicability of a design on a larger or smaller scale.*

So long the proportions, are kept intact, a design is always capable of being applied on a larger or smaller scale.

WHAT CAN NOT BE REGISTERED AS A DESIGN.

(1). *Contrary to law or morality.*

Registration of a design may be refused if the use of it, in the opinion of the Controller be contrary to Law or morality.

(2). *Machine*:—The object of a machine is not its particular shape but the result obtained by the motion of its constituents parts. Although, therefore an isolated member of a machine or even a simple tool, might be registered as a design on account of its particular form of configuration, the protection is so limited that it would have to be regarded as *nil* in the case of machine as a whole. If utility is involved, in the sense that a mechanical appliance or a process is useful for doing something or attaining some result, the protection for such an appliance should be obtained by patents, provided there has been some exercise of inventive faculty in its production. (Patent office hand book).

(3). *Trade or Property Mark.*

Trade or property marks cannot be registered as a design.

(4). *Photo, Pictures.*

Endeavours are sometimes made to register pictures and photographs under the Indian Patents and Designs Act but such a proceeding is not effective. The picture or photograph itself is protected under the Indian Copy Right Act for a considerable term

of years. If registered as a design it is only protected *in so far as its application to specified articles in specified classes is concerned* for a period of 5, 10 or 15 years. Without permission of the owner of the copy right in a picture, if such copy right exists, or in any case if the copy right has expired or never existed, it is not open to any person to endeavour to monopolise the more limited copy right as a design under the Patents and Design Act. (Patent office hand book).

(5). *Letters, Numerals Etc.*

Inasmuch as Letters, Numerals printed or written words are public properties, they cannot be registered as designs.

REGISTER OF DESIGNS.

A book called the Register of Designs is kept at the Patent office. In this book are entered the names and addresses of the proprietors of the registered designs, notifications assignments and of transmission of registered designs and such other matters as may be registered. Subject to payment of fees, the register of designs is open to public inspection. But a registered design shall not be open to inspection until 2 years after the date of application for registration except by the proprietor.

CHAPTER II.

PROCEDURE FOR REGISTRATION OF DESIGN.

1. OFFICE AND OFFICER FOR THE REGISTRATION OF DESIGN.

The office for the registration of design for the whole of British India will be the Patent office at Calcutta under the Controller of patents and designs. There is no branch office for the registration of design.

2. WHO MAY APPLY FOR THE REGISTRATION OF DESIGN.

Any person claiming to be the proprietor of a new or original design, not previously published in British India may apply for the registration of the design. "The proprietor of a new or original design" means or includes;

(1) when the author of the design for good consideration executes the work for some other person, the person for whom the design is so executed;

(2) when any person acquires the design or right to apply the design to any article, the person by whom the design or right has been so required;

(3) when the property in the design has devolved from the original proprietor to any other person, the person on whom the property in the design has so devolved;

(4) in any other case, the author of the design.

3. MANNER OF APPLYING FOR REGISTRATION OF DESIGN.

All applications for registration are required to be addressed to the Controller of Patents and Designs, Calcutta.

An application may be made either by the applicant himself or by his duly authorised agent.

Every applicant shall give an address for service in British India.

Models of designs are not required, if not specially requisitioned.

4. DOCUMENTS REQUIRED FOR REGISTRATION OF DESIGN.

1. APPLICATION.

Application for registration of design must be submitted in the prescribed form and signed in the prescribed manner. The application to contain the following particulars :—

- (a) class or classes of goods in which design is to be registered.
- (b) article or articles to which design is to be applied.
- (c) A brief statement of novelty in respect of the design should be endorsed on the application as well as on each copy of the representation.
- (d) in case a design is already registered, number or numbers of previous registration if any.
- (e) an address for service in British India.

2. REPRESENTATIONS.

(a) *Object of filing Representations.*

The object of filing a representation is not to illustrate how the article of which the representation is filed, is constructed or made to work, but how the article looks like in its finished state.

(b) *Number of representations :*

Four exactly similar drawings, photographs, tracings or other representations or specimens *in ink* should accompany each application.

(c) *Size of the representation.*

Each representation shall be drawn or mounted on paper of a size 13×8 inches (not, note carefully, on cardboard) with a margin of at least one inch and a half on the left hand part thereof and shall appear on one side of the paper.

(d) *View of the Article represented.*

When more figures than one are shown, these shall be on one and the same sheet and each shall be designated e.g. Perspective view, Front view, Side view. The figures shall be put in an upright position. Sectional views of the articles are not allowed.

(e) *Special provisions relating to repeating surface pattern, representations of living persons.*

When the representation of a design consists of a repeating surface pattern, a sufficient portion of the repeat in length and width, not less than $5'' \times 4''$ should be shown.

If the names or representations of living persons appear on a design, consent from such persons should be obtained. In case of a person recently dead, the consent from his legal representatives, is considered necessary.

(f) *Disclaimers.*

When the words, letters or numbers are not the essence of the design, they shall be removed from the representation. When they are the essence of the design, the Controller may require the insertion of a disclaimer to any right of their exclusive use.

5. FROM APPLICATION TO REGISTRATION.

On receipt of an application for registration, the Controller shall *consider* it. The Controller may either accept the application or state his *objections* and in the latter case, unless within one month, the applicant asks for a hearing, he is deemed to have withdrawn his application. The Controller may refuse to register a design but the person aggrieved may *appeal* to the Governor General in Council. In case registration is granted, the Controller shall grant a certificate of registration to the proprietor of the design.

6. TIME LIMIT FOR PROCEEDING WITH AN APPLICATION FOR REGISTRATION OF A DESIGN.

When for default or neglect of the applicant, the registration of the design is not completed within 6 months of the date of application, the same shall be deemed to have been *abandoned*.

CHAPTER III.

REGISTRATION AND AFTER

EFFECTS OF REGISTRATION OF DESIGN.

A registration confers copy right to the proprietor of the Design. But what is the copy right? "Copy right" means the exclusive right to apply a design to any article *in* any class in which the design is registered. The copy right has the same effect as against the crown as it has against the subject.

MARKING OF ARTICLES.

Before delivery on sale of any articles to which a registered design has been applied, the proprietor of such design shall cause each such article to be marked with the word **REGISTERED**, or with the abbreviation **REGD.**, or with the abbreviation **RD.** as he may choose, and also (except in the case of articles to which have been applied designs registered in classes 9, 13 and 14) with the number appearing on the certificate of registration :

Provided that the requirements of this rule and of clause (b) of subsection (1) of Section 48 of the Act shall be dispensed with as regards printed cotton piece-goods except handkerchiefs. (Design Rules)

DURATION AND RENEWAL OF COPY RIGHT.

Registration confers copy right for five years but the proprietor of the design has the right to an extension to a second

period of five years, and the Controller may subject to any rules under the Act grant a still further extension for a third period of five years.

CANCELLATION.

(1) *Application for Cancellation before the Controller.*

An application for Cancellation of a design may be made to the Controller by any person interested, *within one year from the date of registration* on the following grounds, namely

(a) that the design has been previously registered in British India ; or

(b) that it has been published in British India prior to the date of registration.

(2) *Application for Cancellation before the Highcourt.*

An application for Cancellation may be made *at any time after registration to the High court* on the ground, namely

(a) that the design is not new or original.

RECTIFICATIONS AND CORRECTIONS.

The Controller may make such order for making, expunging or varying an entry in the register as he thinks fit and rectify the register accordingly. But it is not within the competence of the Controller to cancel the registration of a design except otherwise as specifically provided for under head "Cancellation". An appeal shall lie to the High Court from any order of the Controller rectifying the Register.

CHAPTER IV.

INFRINGEMENT

WHAT CONSTITUTES INFRINGEMENT.

It is infringement during the existence of copy right in any design :—

(1) to apply for the purpose of sale a registered design or any fraudulent or obvious imitation thereof to any article of the class in respect of which it is registered except with the license or written consent of the registered proprietor or to do anything with a view to enable the design to be so applied. Absence of knowledge of registration is no valid defence ; or

(2) to publish or expose or cause to be published or exposed for sale any article knowing that the design or imitation thereof has been applied to any article without the consent of the registered proprietor.

WHAT DOES NOT CONSTITUTE INFRINGEMENT.

“Once it has been ascertained what is really protected by the registration, the further question as to whether the defendant has copied this is to be decided by the eye alone. The Court has to decide only whether the alleged infringement has the same shape or pattern, and must eliminate the question of identity of function, since another design may have parts fulfilling the same functions without being an infringement. Small differences in detail do not necessarily prevent infringement, but generally speaking, if under normal conditions of user the eye

would not confuse the two designs, there is no infringement, and if there is some outstanding feature of the registered design which is not reproduced, this would generally negative infringement. It is not an actionable imitation merely to take the idea suggested by the design, unless it works out in the way protected by the registration". (Halsbury's, Laws of England).

PENALTY FOR INFRINGEMENT.

In case of infringement, an action may be brought (1) to recover as a simple contract debt a penalty not exceeding Rs. 500/- for each case of contravention but the total sum recoverable under the clause is not to exceed Rs. 500/- in respect of any one design or (2) for an injunction and damages, The remedies are alternative. One cannot have both but must elect one or the other.

CHAPTER V.

MISCELLANEOUS.

CLASSIFICATION OF GOODS.

While dealing with the conditions of registration of designs, (page 108) it was stated that the registration must be in respect of a particular class of goods. The goods are classified in the Fourth Schedule of the Act as under :

THE FOURTH SCHEDULE

Class 1.—Articles composed wholly of metal or in which metal predominates, and jewellery.

- Class 2.—Books and book-binding of all materials.
- Class 3.—Articles composed wholly of India-rubber, wood, bone, ivory, papier mache, or other solid substances not included in other classes, or of materials in which such substances predominate.
- Class 4.—Articles composed wholly of glass, earthenware, or porcelain, clay (burnt or baked) or cement or in which such materials predominate.
- Class 5.—Articles composed wholly of paper, card-board, mill-board or straw-board (except articles included in Class 2, and paper hangings), or in which such materials predominate.
- Class 6.—Articles composed wholly of leather or in which leather predominates, not included in other classes.
- Class 7.—Paper hangings.
- Class 8.—Carpets, rugs and floor coverings in all materials.
- Class 9.—Lace.
- Class 10.—Boots and shoes.
- Class 11.—Millinery and wearing apparel (except boots and shoes).

Class 12.—Goods not included in other classes.

Class 13.—Printed or Woven designs on textile goods (other than checks or stripes).

Class 14.—Printed or Woven designs on textile goods being checks or stripes.

FEES :—“The fee payable on an application to register in any one class Nos. 1-12 is Rs. 3/- and in any one class Nos. 13 and 14 is As. 8. When the design is to be applied to a set of articles, the fee payable is Rs. 3/-. Separate applications are required when the design is to be registered in more than one class”. (Patent office hand book.)

THE END.

To Our Prospective Customers & Agents.

We offer you our services as **PATENT AND TRADE MARKS ATTORNEYS** to register for you and on your behalf, your trade marks, trade names of goods, trade names of business and designs and secure your Patent rights. We have also specialised in preparation of blocks, designs and Patent drawings. The author, Mr. P. N. RAY, B.L. the author of "The Law of Trade marks & design" is our legal adviser. We can, therefore, assure you better and more efficient service than others. Trials solicited.

WANTED AGENTS to secure Patents and Trade Marks Works and push the sale of our publication "The Law of Trade Mark and Designs" which is the first of its kind and for the first time in the market. **Agency terms very favourable.**

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